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Supreme Court, U.S.
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No. 92-46

In the Supreme Court of the United States

OCTOBER TERM, 1992

VIRGINIA SMITH (WIDOW OF LINDEL SMITH) (DECEASED), JERRY LYNN SMITH, LARRY WAYNE SMITH, TINA MARIE SMITH, JIMMIE DARRELL SMITH, AND BELINDA JOY MANTEJA, PETITIONERS

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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EDITOR'S NOTE

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QUESTION PRESENTED

Whether the court of appeals properly dismissed an appeal for lack of jurisdiction under Federal Rule of Appellate Procedure 15 because the appeal was taken in the name of a claimant for benefits under the Black Lung Benefits Act who had died while the case was pending at the administrative level, and no motion to substitute the claimant's statutory successors was made prior to the expiration of the 60-day period for filing a notice of appeal.

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VIRGINIA SMITH (WIDOW OF LINDEL SMITH) (DECEASED), JERRY LYNN SMITH, LARRY WAYNE SMITH, TINA MARIE SMITH, JIMMIE DARRELL SMITH, AND BELINDA JOY MANTEJA, PETITIONERS

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DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

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OPINIONS BELOW

The decision of the court of appeals (Pet. App. A1-A2) is unpublished, but the decision is noted at 954 F.2d 725 (Table). The decisions of the Benefits Review Board (Pet. App. B1-B5) and the administrative law judge (Pet. App. C1-C10) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 10, 1992. A petition for rehearing was denied on April 3, 1992. Pet. App. D1-D2. The petition for a writ of certiorari was filed on July 2, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, provides benefits to eligible survivors of coal miners who died due to mining-related pneumoconiosis. Virginia Smith (the claimant), widow of deceased miner Lindel Smith, filed an application for benefits under the Act on March 6, 1981. Pet. App. C3. The Department of Labor denied the claim in November 1981, and the claimant requested a formal hearing. *Ibid.*

On January 14, 1986, the administrative law judge issued a decision and order denying benefits. Pet. App. C1-C10. The claimant appealed the ALJ's decision to the Department of Labor's Benefits Review Board. *Id.* at B2. Respondent agreed that further proceedings were required before the ALJ, and asked the Board to remand the case. *Id.* at B2 n.1. On May 14, 1988, while the appeal was pending before the Board, the claimant died. App., *infra,* 2a, 6a. Neither the Board nor respondent was advised of the claimant's death. On August 22, 1991, the Board issued a decision and order on the merits affirming the denial of benefits. Pet. App. B1-B5.

2. a. On October 21, 1991, a "Notice of Appeal,"[1] apparently authorized by the claimant's five adult children, was filed in the court of appeals in the name of "Virginia Smith (widow of Lindel Smith) (deceased)." Pet. App. E1; see also *id.* at A2. On December 3, 1991, the children filed a brief on the merits and a motion (App., *infra,* 1a-8a) requesting that the court substitute them as petitioners pursuant to Fed. R. App. P. 43. The motion for substitution informed the court that Virginia Smith had died while the case was pending at the Board, and contended that the

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[1] Although the document was captioned "notice of appeal," we note that it would technically be a petition for review of the Board's order under 30 U.S.C. 932(a), 33 U.S.C. 921(c) and Fed. R. App. P. 15(a).

children were the proper parties in interest under 20 C.F.R. 725.545(c), which provides that when there are no other survivors, the non-dependent children of a deceased claimant are entitled to share equally in any black lung benefits owed. Because Virginia Smith had no other survivors entitled to priority over themselves, the five adult children claimed to be "the proper representatives of the deceased to share the benefits equally and to be substituted for the Petitioner in this action." App., *infra,* 3a.

Respondent first learned of Virginia Smith's death through the motion for substitution. Pet. App. F5. Respondent did not object to the substitution. Instead, respondent indicated that substitution would serve the remedial purposes of the Black Lung Benefits Act. *Id.* at F7. Respondent nevertheless advised the court that under a strict reading of Fed. R. App. P. 15 and applicable case law, the court might lack jurisdiction to hear the claim because the notice of appeal had not specified the real parties in interest seeking appellate review. Pet. App. F2-F7.

b. The court of appeals dismissed the appeal for lack of jurisdiction. Pet. App. A1-A2. The court noted that under Fed. R. App. P. 43, when a party "entitled to appeal" dies before a notice of appeal has been filed, the appeal may be filed by the decedent's personal representative or by the decedent's attorney of record. The court pointed out that even if the decedent's children were the proper representatives to authorize the appeal under Rule 43, the notice of appeal did not indicate that they were the appealing parties. Nor did the notice of appeal indicate that the decedent's attorney was the appealing party. The court therefore found that it lacked jurisdiction over the petitioners under its prior decision in *Minority Employees* v. *Tennessee,* 901 F.2d 1327 (6th Cir.) (en banc) (interpreting Fed. R. App. P. 3, the analog of Rule 15 for appeals from district courts, to require that a notice of appeal name

each party taking the appeal), cert. denied, 111 S. Ct. 210 (1990). Furthermore, the lack of jurisdiction could not be cured under Rule 43 because the motion to substitute had been made after the appeal period had expired, and the court lacked authority to extend that period. Pet. App. A2.

ARGUMENT

The court of appeals' decision to dismiss this appeal for failure to "specify the parties seeking review" under Fed. R. App. P. 15 is a reasonable application of precedent to the particular facts of this case. The decision addresses a narrow and avoidable factual situation, does not conflict with any decision of this Court or with any considered decision of another court of appeals, and does not impose any onerous burden on successors of deceased black lung claimants. Further review is therefore unwarranted.[2]

1. Section 422(a) of the Black Lung Benefits Act, 30 U.S.C. 932(a), incorporates Section 21(c) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 921(c), which requires that a petition for judicial review be filed within 60 days after issuance of the Board's order. This requirement is jurisdictional.[3] Rule 15 of the Federal Rules of Appellate Procedure, in turn, requires that a petition for appellate review of an agency order be filed "with-

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[2] We note that on August 22, 1992, the Smith children filed a motion for modification with the deputy commissioner, the ALJ and the Board pursuant to 20 C.F.R. 725.310. The petitioners may therefore have an opportunity to pursue their claims in, or on review of, the modification proceeding.

[3] See *Shendock* v. *Director, OWCP*, 893 F.2d 1458 (3d Cir.), cert. denied, 111 S. Ct. 81 (1990); *Adkins* v. *Director, OWCP*, 889 F.2d 1360 (4th Cir. 1989); *Brown* v. *Director, OWCP*, 864 F.2d 120 (11th Cir. 1989); *Mussatto* v. *Director, OWCP*, 855 F.2d 513 (8th Cir. 1988); *Danko* v. *Director, OWCP*, 846 F.2d 366 (6th Cir. 1988).

in the time prescribed by law," in this case within 60 days, and that the petition "shall specify the parties seeking review." The Rule 15 requirements for obtaining review of an administrative decision thus track those contained in Rule 3, which requires that a notice of appeal from a district court decision "shall specify the party or parties taking the appeal" and Rule 4, which prescribes time limits for obtaining review of district court decisions.

In *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312 (1988), this Court affirmed dismissal of the petitioner's action despite the undisputed fact that his name was omitted from the notice of appeal only because of a clerical error. *Id.* at 313. The Court held that although procedural rules should be "liberally construed" without undue insistence on "mere technicalities," *id.* at 316, "[t]he specificity requirement of Rule 3(c) is met only by some designation that gives fair notice of the specific individual or entity seeking to appeal," *id.* at 318, and thus "[t]he failure to name a party in a notice of appeal is more than excusable 'informality'; it constitutes a failure of that party to appeal." *Id.* at 314. Because Fed. R. App. P. 26(b) forbids enlargement of the time for filing notices of appeal, failure to name a party in the notice of appeal or to amend the notice within the time for filing the appeal deprives the court of appeals of jurisdiction over the unnamed parties. 487 U.S. at 314-317.

The Sixth Circuit, sitting en banc, applied *Torres* in *Minority Employees* v. *Tennessee, supra,* the case relied on by the panel below in dismissing this appeal. Moreover, the jurisdictional principles of *Torres* are equally applicable to the identical specificity requirement in Fed. R. App. P. 15. See *Kowaleski* v. *Director, OWCP,* 879 F.2d 1173, 1175-1177 (3d Cir. 1989), cert. denied, 493 U.S. 1070 (1990).

2. The decision below applied the principles announced in *Torres* to the particular facts of this case in a manner that does not conflict with *Torres* or with any other decision of this Court. The court concluded (Pet. App. A1-A2) that because the notice of appeal was filed in the name of a deceased individual and made no reference to the real parties in interest (or to the decedent's attorney of record below), the notice failed to satisfy the threshold jurisdictional requirement that the appealing parties be identified. The motion for substitution, the first notice to the court and respondent of the true identity of the petitioners,[4] was not received within the 60-day appeal period, and the court held that it was powerless to extend the period for appeal. *Id.* at A2.

Petitioners contend (Pet. 16) that *Torres* and the rules of appellate procedure require only that the notice of appeal inform the court and the parties of "the nature and extent of the claim being appealed." This Court stated in *Torres*, however, that the purpose of the naming requirement is to provide notice "of the identity of the appellant or appellants" (487 U.S. at 318), despite the contention that "all issues in the case were treated as common to all the plaintiffs" (*id.* at 323 (Brennan, J., dissenting)). The decision below that Rule 15 requires correct identification of the parties in interest is perfectly consistent with the decision in *Torres*.[5]

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[4] We do not agree with petitioners (Pet. 5) that the notice of appeal indicated that Virginia Smith was dead. The term "(deceased)" in the caption (Pet. App. E1), without more, would most naturally be read as referring to the miner, Lindel Smith. Subsequent pleadings, including petitioners' motion for substitution (App., *infra*, 1a), confirm this reading by eliminating the double parentheses. The body of the notice of appeal also refers to Virginia Smith as if she is alive and personally pursuing the appeal. Pet. App. E1.

[5] Because the petitioners have misconstrued the purpose of the naming requirement, they similarly miss the mark in arguing (Pet. 19-22) that the Sixth Circuit's decision below conflicts with its own

Nor does the decision below conflict with this Court's recent decision in *Smith* v. *Barry*, 112 S. Ct. 678 (1992). *Smith* holds, 112 S. Ct. at 682, that a brief filed by a *pro se* prisoner can qualify as the "functional equivalent" of a notice of appeal so long as it "is timely under Rule 4 and conveys the information required by Rule 3(c)." The issue in this case is precisely whether the notice of appeal filed by petitioners' counsel "convey[ed] the information required by Rule 3(c)" – an issue this Court left open on remand to the court of appeals in *Smith*. *Smith* therefore provides no guidance on the issue in this case.

It would be possible, as petitioners argue (Pet. 16-17) and as respondent suggested to the court of appeals (Pet. App. F5-F6), to distinguish *Torres* on the ground that the present case does not involve multiple parties with potentially independent claims, but rather a claim by successors in interest whose entitlement is derivative of the decedent's under the governing law (see 20 C.F.R. 725.545(c)). Declining to adopt an exception to an established general rule does not, however, create a conflict with the rule. Although respondent would not have objected to a con-

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decision in *Adkins* v. *United Mine Workers*, 941 F.2d 392 (1991), cert. denied, 112 S. Ct. 1180 (1992), and with decisions from the Second, Seventh, Ninth and Tenth Circuits applying a "functional" analysis to the naming requirement. Those decisions have held that references to the parties appealing are sufficient to satisfy the purposes of that requirement if they provide clear notice of each party's name. See *Adkins*, 941 F.2d at 398; *Association of Am. Medical Colleges* v. *Cuomo*, 913 F.2d 55, 55-56 (2d Cir. 1990); *Hartford Casualty Ins. Co.* v. *Borg-Warner Corp.*, 913 F.2d 419, 422-424 (7th Cir. 1990); *National Ctr. for Immigrants' Rights, Inc.* v. *INS*, 892 F.2d 814, 816-817 (9th Cir. 1989); *Tri-Crown, Inc.* v. *American Fed. Sav. & Loan Ass'n*, 908 F.2d 578, 579-580 (10th Cir. 1990). They do not stand for the proposition that a notice of appeal meets the specificity requirement so long as it provides the court and opposing parties with "notice of the nature and extent of the appeal no matter what name is used in the notice" (Pet. 19).

trary decision by the court of appeals, the decision below is consistent with this Court's precedents.

3. The decision is also consistent with Fed. R. App. P. 43. Rule 43 addresses the proper procedure to be followed where, as here, a party dies before an appeal is taken, but it does not change the basic requirements of Rule 15. Rule 43 provides:

> If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by that party's personal representative, or, if there is no personal representative by that party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision.

Fed. R. App. P. 43(a). As the court of appeals noted, Pet. App. A2, the notice of appeal below gave no indication that the appeal was taken either by Virginia Smith's attorney of record[6] or by her personal representatives.[7] The Advisory Committee Notes to the Rules of Appellate Procedure make clear that whoever takes the appeal, it "must be taken within the time ordinarily prescribed," and it was

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[6] Petitioners' appellate counsel were not counsel of record for Virginia Smith before the Board. See Pet. App. F5.

[7] Indeed, it is not clear that petitioners would most properly come before the court as Virginia Smith's "personal representatives" as that term is usually understood (*i.e.*, as representatives of her estate). Under the distribution of benefits provisions of 20 C.F.R. 725.545(c), the interest of a deceased claimant's estate is quite remote. See 20 C.F.R. 725.545(c)(7). Petitioners are more properly characterized as Virginia Smith's successors in interest under 20 C.F.R. 725.545(c)(5). See also App., *infra*, 2a-3a. We note, however, that the term "personal representative" may be given a broad construction in the context of Rule 43. See *Gamble* v. *Thomas*, 655 F.2d 568 (5th Cir. 1981).

reasonable for the court below to conclude that nothing in Rule 43 permitted reliance on a notice of appeal and motion for substitution that did not, within the time allowed for appeal, give clear notice of the specific identity of the appealing party.

4. Review is also not necessary to resolve a conflict in decisions of the courts of appeals. Petitioners suggest two decisions of other courts in support of their claim of a conflict in authority. Pet. 12. In *Slade for Estate of Slade* v. *U.S. Postal Serv.*, 952 F.2d 357, 359-360 (10th Cir. 1991), the appellee moved to dismiss because the plaintiff had died before the district court issued its decision, but no substitution was made by the district court. The Tenth Circuit rejected the argument that Rule 43 allows substitution only if the appellant dies after the district court enters its judgment or after the notice of appeal is filed. Reasoning that "Rule 43(a) contemplates the filing of a notice of appeal and substitution of a party after the death of the party," 952 F.2d at 360, the court allowed substitution of the plaintiff's wife to prosecute the appeal. The opinion reveals only that "[p]laintiff's attorney of record filed a Notice of Appeal" within the prescribed time, however, *id.* at 359, and it is therefore impossible to determine from the opinion whether the court passed, even *sub silentio*, on the specificity issue under Rules 3 and 15 that was addressed by the court of appeals in this case. 952 F.2d at 359.

In *Ciccone* v. *Secretary of Dep't of Health & Human Servs.*, 861 F.2d 14, 15 n.1 (1988), the Second Circuit concluded in a footnote that it could decide an appeal filed in the name of a deceased appellant despite the fact that no motion for substitution had been filed either in the district court or in the court of appeals. The court cited its earlier opinion in *Coffee* v. *Cutter Biological*, 809 F.2d 191, 193 n.1 (2d Cir. 1987), where it had sanctioned (with only passing comment) the district court's continued treatment of a decedent as a party because his death had not yet been

reflected in the record, and two other cases where appellate courts were informed at oral argument that parties had died (in one case after the appeal had been filed and was pending). As in *Slade,* the court did not purport to address the naming requirement in Rule 3.

Neither of the cases cited by petitioners reflects a considered decision by another court of appeals on the issue presented in this case. We do not believe that any conflict in result that they may present is sufficiently well defined or sufficiently important to warrant consideration by this Court at the present time.

5. Finally, petitioners (and amicus) are mistaken in arguing (Pet. 18-19; Am. Br. 3) that compliance with the specificity requirement of Rule 15 as contemplated by the court of appeals in this case is impossible. For one thing, although it is true that the Benefits Review Board's procedural rules, 20 C.F.R. Pts. 801-802, neither require nor make any explicit provision for substitution of parties in the event of death, contrary to the petitioners' argument (Pet. 18-19), the Board certainly has the power to substitute a successor in interest if requested to do so. See *Pauley* v. *Bethenergy Mines, Inc.*, BRB No. 88-2565 BLA (Ben. Rev. Bd. Aug. 14, 1990) (substituting widow for deceased miner).[8] Moreover, whether or not the successors

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[8] In *Pauley,* a miner who had been awarded benefits by the ALJ died while an appeal was pending before the Board. The Board affirmed the award of benefits, and the responsible operator appealed to the Third Circuit, naming the deceased miner as respondent. After the court of appeals reversed and remanded to the Board, the miner's widow filed a petition for a writ of certiorari with this Court, in her own name, as "survivor" of the deceased miner. See *Pauley* v. *Bethenergy Mines, Inc.*, 111 S. Ct. 2524 (1991). The Director then moved the Board to substitute the widow *nunc pro tunc* to the date of the miner's death, in order to "reflect her status as the named petitioner in the Supreme Court." See Supplemental Br. for the Fed. Resp. at 2a-3a, *Pauley* v. *Bethenergy Mines, Inc.*, No. 89-1714. As

are substituted by the Board, the decedent's attorney of record or successors could file a petition for review that would properly notify the court and the other parties that the claimant is deceased and that the appeal is being filed on behalf of the successors. See Pet. App. A2; Fed. R. App. P. 43(a). Finally, a motion to substitute could be filed in the court of appeals within the time allowed for the original appeal. *Ibid.* Any of these methods would serve the important purpose of providing notice "of the identity of the appellant or appellants," *Torres,* 487 U.S. at 318, without imposing any onerous burden on the successors to a claimant's interests.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1992

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noted, the Board granted this motion to substitute. *Id.* at 4a-5a. This result does not conflict with the refusal by the court of appeals to substitute in this case because in *Pauley* there was no question that the widow had been properly identified in the petition for certiorari, and the widow had been the respondent rather than the petitioner in the court of appeals.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-3978
OWCP No. 407-07-1654

VIRGINIA SMITH (WIDOW OF
LINDEL SMITH, DECEASED), PETITIONER

v.

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR, RESPONDENT

MOTION FOR SUBSTITUTION OF PARTIES DUE TO DEATH OF PETITIONER

Jerry Lynn Smith, Larry Wayne Smith, Tina Marie Smith, Jimmie Darrell Smith and Belinda Joy Mateja, as the personal representatives of Petitioner VIRGINIA SMITH, and by their undersigned attorneys, move this Court pursuant to Rule 43 of the Federal Rules of Appellate Procedure to be substituted as Petitioners in the above-captioned case. In support of their motion, they state as follows:

1. The miner, Lindel Smith, died on August 22, 1960 (a copy of his death certificate is attached as Exhibit A) and was survived by his wife, Virginia Smith, who was living in the same household with Lindel Smith at the time of his death.

2. On March 6, 1981, Virginia Smith filed her claim for benefits under the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the "Act"), and was entitled to claim benefits under Section 725.545(c)(1) of the regulations promulgated under the Act. 20 C.F.R. § 725.545(c)(1). Section 725.545(c)(1) of the regulations provides that the surviving spouse of a miner is entitled to benefits under the Act. *Id.*

3. Virginia Smith died on May 14, 1988, while her claim was pending before the Benefits Review Board. A copy of her death certificate is attached as Exhibit B.

4. Pursuant to Section 725.545(c) of the regulations under the Act, if the government owes black lung benefits to an individual who dies prior to collecting such benefits, the payments are distributed to living individuals in the order of priority established under the Section. 20 C.F.R. § 725.545(c). Under the regulations, the following persons become entitled to benefits in order of priority: (1) dependent children entitled to benefits under the Act who survive the miner or surviving spouse, (2) the miner's surviving parents entitled to benefits under the Act, (3) a surviving spouse of the miner, not entitled to benefits under Section 725.545(c)(1) of the regulations, and (4) surviving children of the deceased individual who do not otherwise qualify to claim benefits under the Act. 20 C.F.R. § 725.545(c)(2)-(5).

5. Virginia Smith was survived by five adult children: Jerry Lynn Smith, Larry Wayne Smith, Tina Marie Smith, Jimmie Darrell Smith and Belinda Joy Mateja, (all currently living) none of whom suffer from a disability and none of whom were full-time students at the time of Virginia Smith's death. See Affidavit of Tina M. Smith (hereinafter "Affidavit") at ¶¶ 4-5, attached hereto as Exhibit C.

6. The miner's parents, Herbert Smith and Mossie Sullivan Smith, both predeceased Virginia Smith, the miner's widow. See Affidavit, Exhibit C at ¶ 6.

7. Lindel Smith was married only to Virginia Smith during his lifetime. See Affidavit, Exhibit C at ¶ 17.

8. Because none of the children surviving Virginia Smith were minors, disabled, or students, there are no claimants under Subsection 725.545(c)(2) of the priority rules. Further, the miner's parents did not survive Virginia Smith, so there are no claimants under Subsection 725.545(c)(3) of the priority rules. Finally, the miner was married only to Virginia Smith, and therefore, no individual exists to claim under Subsection 725.545(c)(4).

9. Pursuant to Subsection 725.545(c)(5) of the regulations under the Act, the child or children of the deceased individual (who do not otherwise qualify under (c)(2)) share the deceased individual's benefits. 20 C.F.R. § 725.545(c)(5). If there is more than one such child, such children share in the benefits equally. *Id.* Therefore, Jerry Lynn Smith, Larry Wayne Smith, Tina Marie Smith, Jimmie Darrell Smith and Belinda Joy Mateja are the proper representatives of the deceased to share the benefits equally and to be substituted for the Petitioner in this action.

WHEREFORE, Jerry Lynn Smith, Larry Wayne Smith, Tina Marie Smith, Jimmie Darrell Smith and Belinda Joy Mateja, as representatives of the deceased VIRGINIA SMITH, move this Court pursuant to Rule 43 of the Federal Rules of Appellate Procedure to be substituted for VIRGINIA SMITH as the Petitioners in the above-captioned case.

/s/ Ann L. Gibson

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STATE OF ILLINOIS
COUNTY OF COOK } SS
CITY OF CHICAGO

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ORIGINAL

STATE OF ILLINOIS

STATE FILE NUMBER 58020

DECEDENT'S BIRTH NO.

CORONER'S CERTIFICATE OF DEATH

REGISTRATION DISTRICT NO. 1610 REGISTERED NUMBER

1. PLACE OF DEATH
a. COUNTY: COOK COUNTY, ILLINOIS
b. Death took place ☐ OUTSIDE city limits and in ..... TOWNSHIP. ☐ INSIDE city limits and in the city, village, or town named in 1a.
c. CITY, VILLAGE, OR TOWN: CHICAGO
d. LENGTH OF STAY IN 1b or 1c: 4 YRS
e. NAME OF HOSPITAL OR INSTITUTION (If not in hospital or institution, give street address): WEISS MEMORIAL
f. LENGTH OF STAY IN 1e: D O A

2. USUAL RESIDENCE (Where deceased lived. If institution, residence before admission.)
a. STATE: ILLINOIS
b. COUNTY: Cook
c. Residence was ☐ OUTSIDE city limits and in ..... TOWNSHIP. ☐ INSIDE city limits and in the city, village, or town named in 2a
d. CITY, VILLAGE, OR TOWN: CHICAGO
e. LENGTH OF STAY At 2c or 2d: 4 Y
f. STREET ADDRESS: 473 N. WINTHROP
Is this address ON A FARM? YES ☐ NO

3. NAME OF DECEASED — a. FIRST: LINDEL — b. MIDDLE — c. LAST: SMITH
4. DATE OF DEATH — MONTH: 8 — DAY: 22
5. SEX: MALE
6. RACE: WHITE
7. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify): MARRIED
8. DATE OF BIRTH: MARCH-2-1921
9. AGE — Last Birthday: 39 — If under 1 year: Months / Days / Hours
10a. USUAL OCCUPATION (Give kind of work done during most of working life, even if retired): JANITOR
10b. KIND OF BUSINESS OR INDUSTRY: A.B. DICK-Co
11. BIRTHPLACE (City and state or foreign country): BROWDER-KENTUCKY
12. Citizen of (Country): USA
13. Was deceased ever in U.S. Armed Forces? (Yes, no, or unknown. If yes, give war or dates of service): NO — NONE
14. SOCIAL SECURITY NUMBER: 403-07 4071
15. INFORMANT
a. SIGNATURE: Veronica M. Smith
b. ADDRESS: 4730 N. Winthrop
c. RELATIONSHIP TO DECEASED: WIFE

16. MEDICAL CAUSE OF DEATH
PART I. DEATH WAS CAUSED BY (Enter only one cause per line for (a), (b), and (c).)
IMMEDIATE CAUSE (a): CARBON MONOXIDE POISNING
Conditions, if any, which gave rise to the above IMMEDIATE CAUSE (a), stating the UNDERLYING cause last.
due to (b):
due to (c):
Interval between Onset and Death:
PART II. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO THE TERMINAL CONDITION
17. AUTOPSY? YES ☒

20a. ACCIDENT (specify) SUICIDE HOMICIDE UNDETERMINED
20b. DESCRIBE HOW INJURY OCCURRED (Specify NATURE of injury under 16 MEDICAL CAUSE, 1 a-16): DECEASED IN SOME UNKNOWN MANNER
20c. TIME OF INJURY (Hour) (Month) (Day) (Year): 12:01 A.M. AUG-22-60
WAS OVERCOME BY CARBON MONOXIDE IN G
20d. INJURY OCCURRED: WHILE AT WORK ☐ NOT WHILE AT WORK ☒
20e. PLACE OF INJURY (e.g., in or about home, farm, factory, street, office bldg., etc.): IN GARAGE
20f. INJURED AT (City, Township, or Location) (If within City Limits): CHICAGO Cook Ill

21a. Upon medical investigation I find this death was caused as stated above. DATE SIGNED: 8/24/60 SIGNED: MATTHEW PRICE M.D. CORONER'S PHYSICIAN
21b. Upon official investigation I find this person deceased as stated above. SIGNED: Frederick E. Fry Coroner DATE SIGNED: 8/12/61

22. DISPOSITION: BURIAL REMOVAL CREMATION DATE: 8-26-60
PLACE: CEMETERY: HAGAN
LOCATION: CENTRAL City, Ky
23. FUNERAL DIRECTOR: FIRM NAME: McCarthy Funeral Home
ADDRESS: 4616 S. Michigan Blvd. Chicago, Ill.

CAUSE OF DEATH 8916

CONSISTING OF 4 PAGES.

MEDICAL CERTIFICATE OF DEATH

609839

Virginia		Smith	2 Female	3 May 14, 1988	
White	4 American	5a 64		Feb.4,1924	7a Cook
6a Chicago	6c Northwestern Memorial Hospital				6d Inpatient
8a Illinois	9 U.S.A.	10 Widowed	11 None		
12a 405-36-5629	12b Homemaker	12c Own Home	12e No	12d None	
13a 236 Forest ave. #105	13b Round Lake	13c Yes	13d Lake	13e Illinois	
14 Lawrence Jones		15 Winnie Talley			
17a Jackie Smith	17b Medical Records	17c 303 E. Superior Chicago, Il. 60611			

DEATH WAS CAUSED BY: (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)

PART I. IMMEDIATE CAUSE	18a Massive Bilateral Pneumonia	
DUE TO OR AS A CONSEQUENCE OF:	18b Hepatic Congestion with Spenomegaly	
DUE TO OR AS A CONSEQUENCE OF:	18c Scleroderma	

PART II. OTHER SIGNIFICANT CONDITIONS. CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (a).

		19a AUTOPSY (YES/NO) Yes	19b IF YES WERE FINDINGS CONSIDERED IN DETERMINING CAUSE OF DEATH
20a TYPE OF OPERATION, IF ANY	20b MAJOR FINDINGS OF OPERATION	20c IF FEMALE, WAS THERE A PREGNANCY IN PAST THREE MONTHS? YES ☐ NO ☐	

21a I DID (DID NOT) ATTEND THE DECEASED (MONTH, DAY, YEAR) I did last attend patient/ May 14, 1988 | 21b WAS CORONER OR MEDICAL EXAMINER NOTIFIED? (SPECIFY YES OR NO) No | 21c HOUR OF DEATH 11:15 P. M.

TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE TIME, DATE AND PLACE AND DUE TO THE CAUSE(S) STATED. | 22b DATE SIGNED (MO., DAY, YR.) May 16, 1988

22a SIGNATURE ▶ Frank K Schmid

22c NAME AND ADDRESS OF CERTIFIER (TYPE OR PRINT) Frank Schmid, M.D. 222 E. Superior Chciago, Il. 60611 | 22d ILLINOIS LICENSE NUMBER 36-34988

23a NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (TYPE OR PRINT) | NOTE IF AN INJURY WAS INVOLVED IN THIS DEATH THE CORONER OR MEDICAL EXAMINER MUST BE NOTIFIED

24a BURIAL, CREMATION, REMOVAL (SPECIFY) Burial	24b CEMETERY OR CREMATORY—NAME Fairmont	24c LOCATION (CITY OR TOWN, STATE) Central City, Kentucky	24d DATE (MONTH, DAY, YEAR) May 21,1988
25a FUNERAL HOME NAME	STREET AND NUMBER OR R.F.D.	CITY OR TOWN	STATE ZIP 60622
All Chicago Mortuary Service, Inc.	1341 N. Western ave.	Chicago, Ill.	

25b FUNERAL DIRECTOR'S SIGNATURE ▶ Ronald G. Lenz | 25c FUNERAL DIRECTOR'S ILLINOIS LICENSE NUMBER 8487

26a LOCAL REGISTRAR'S SIGNATURE ▶ Oswald C Edwards M.D 11:54 | 26b DATE REC'D BY LOCAL REGISTRAR (MONTH, DAY, YEAR) MAY 16 1988

FORM REV. 7/82 — FOR MEDICAL CERTIFICATE AND CERTIFICATE OF VITAL FACTS — OFFICE OF VITAL RECORDS

MAY 16 1988

STATE OF ILLINOIS
COUNTY OF COOK SS
CITY OF CHICAGO

I, LONNIE C. EDWARDS M.D. M.P.A., LOCAL REGISTRAR OF VITAL STATISTICS OF THE CITY OF CHICAGO, DO HEREBY CERTIFY THAT I AM THE KEEPER OF THE RECORDS OF BIRTHS, STILLBIRTHS AND DEATHS OF THE CITY OF CHICAGO BY VIRTUE OF THE LAWS OF THE STATE OF ILLINOIS AND THE ORDINANCES OF THE CITY OF CHICAGO; THAT THE ACCOMPANYING CERTIFICATE ON THIS SHEET IS A TRUE COPY AS A RECORD KEPT BY ME IN PURSUANCE OF SAID LAWS AND ORDINANCES.

DEPARTMENT OF HEALTH CITY OF CHICAGO

THIS CERTIFIED COPY VALID WHEN MULTICOLOR SEAL AND BLUE SIGNATURE ARE AFFIXED

EXHIBIT B

EXHIBIT C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-3978

VIRGINIA SMITH (WIDOW OF
LINDEL SMITH, DECEASED), PETITIONER

v.

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR, RESPONDENT

AFFIDAVIT OF TINA M. SMITH

I, TINA M. SMITH, having been first duly sworn, depose and state as follows:

1. I make the following statements based on my personal knowledge of the events and conditions described herein and if called and sworn as a witness, I could testify competently thereto.

2. I am the daughter of Lindel Smith and Virginia Smith.

3. My brothers and sister who survived my mother (and are currently living) are Jerry Lynn Smith, Larry Wayne Smith, Jimmie Darrell Smith and Belinda Joy Mateja.

4. My birthdate is April 25, 1960. The birthdates of my brothers and sister are as follows: Jerry Lynn Smith, June 18, 1942; Larry Wayne Smith, July 22, 1945; Jimmie Darrell Smith, June 22, 1943; and Belinda Joy Mateja, August 4, 1955.

5. Each of my brothers and sister and I were independent adults at the time of my mother's death on May 14, 1988. None of us were full-time students dependent upon my mother at that time. Neither myself nor any of my brothers and sister are disabled.

6. My father's father, Herbert Smith, died in 1962. My father's mother, Mossie Sullivan Smith, died on December 20, 1987.

7. My father, Lindel Smith, was married only to my mother, Virginia Smith, during his lifetime.

Further affiant sayeth not.

/s/ Tina M. Smith
TINA M. SMITH

Signed before me on the
29 day of November, 1991.

/s/ Patricia M. Dionesotes
Notary Public
"OFFICIAL SEAL"
PATRICIA M. DIONESOTES
Notary Public, State of Illinois
My Commission Expires 8/6/95

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